

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FILED**  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
05 MAR 11 AM 8:33  
CLERK-ALBUQUERQUE

**REBECCA MARCHAND, AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ALFRED G. MARCHAND, DECEASED.**

**Plaintiff,**

**Vs.**

**CIV - 05 - 266 LAM LCS**

**JOSHUA MARCHAND,**

**Defendant.**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Comes Now, Rebecca Marchand, individually, and as the Personal Representative of the Estate of Alfred G. Marchand, by and through her attorney, and for her Petition for Declaratory Judgment states that:

1. Rebecca Marchand ("Marchand") is the Personal Representative of the Estate of Alfred G. Marchand, duly appointed and qualified by the Probate Court of Otero County, New Mexico Cause No. CCP-75-01. She is the widow of Alfred G. Marchand who died while he was a passenger on an airplane during the terrorist attack on New York City, New York on September 11, 2001 when his airplane crashed into the World Trade Center.

2. Rebecca Marchand is a resident of the State of New Mexico.

3. Rebecca Marchand is a Claimant of the September 11<sup>th</sup> Victim Compensation Fund, administered by the United States Department of Justice.

4. Joshua Marchand is a resident of the State of New Mexico; and a beneficiary under the claim filed by Rebecca Marchand with the September 11<sup>th</sup> Victim Compensation Fund.

5. The Court has jurisdiction pursuant to Title IV of the Public Law 107-42, 115 statute 230, 49 USC Section 40101, [Air Transportation Safety and Systems Stabilization Act], 28 CFR Part 401 and Public Law No. 107-134 [The Victims of Terrorism Tax Relief Act of 2001].

6. The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

7. The Congress of the United States created and funded the September 11<sup>th</sup> Victim Compensation Fund of 2001 ("Fund") pursuant to Title IV of Public Law 107-42 of the "Air Transportation Safety and System Stabilization Act". The fund is administered by the United States Department of Justice solely under federal law. The Final Rule with regard to the administration of the September 11<sup>th</sup> Victim Compensation Fund of 2001 is found at 28 CFR Part 104 [Civ. 104f; AG Order NO. 2564-2002].

8. On June 28, 2004 Kenneth R. Feinberg, the Special Master of the September 11<sup>th</sup> Victim Compensation Fund of 2001 entered his award for Rebecca Marchand, individually, and as the Personal Representative of the Estate of Alfred G. Marchand Deceased, a copy of the "Award" is attached hereto as Exhibit "A" and incorporated herein as if fully set forth.

9. The determination of the awarded amounts by the Special Master is final and not subject to judicial review. See Exhibit "A", Air Transportation Safety and System Stabilization Act, 115 Statute 230, 49 USC Section 40101, Section 405(b) (3) (2001).

10. Joshua Marchand has sought judicial review in State Court of the Award dated June 28, 2004, by the Special Master of the September 11<sup>th</sup> Victim Compensation of Rebecca Marchand's entitlement to the benefits from the Fund, and to his award as determined by the Special Master of the Fund.

11. This Complaint for Declaratory Judgment is filed in accordance with Rule 57 of the Federal Rules of Civil Procedure, and the parties request a speeding hearing as allowed by Rule 57 of the Federal Rules of Civil Procedure.

12. An actual controversy exists between Rebecca Marchand and Joshua Marchand regarding the review, application and finality of the determination and award made by Kenneth R. Feinberg, the Special Master of the September 11<sup>th</sup> Victims Compensation Fund.

13. Rebecca Marchand requests a Declaratory Judgment under the "Air Transportation Safety and System Stabilization Act", more specifically, that Joshua Marchand has no right, title to the September 11<sup>th</sup> Victims Compensation Fund payments awarded to Rebecca Marchand, individually or otherwise, other than as set forth by the Award dated June 28, 2004, by Kenneth R. Feinberg, the Special Master of the Fund.

14. A Declaratory Judgment is necessary to confirm the Distribution of the Award to the claimants, as provided by September 11<sup>th</sup> Victim Compensation Fund 2001, Title 28, Chapter 1, Part 104, Section 104.52, 69RR 43774, 28 C.F.R., Section 104.52, both as to the benefits and beneficiaries of the award.

15. A Declaratory Judgment is necessary to confirm the payment of the Award, as determined by the Special Master of the September 11<sup>th</sup> Victims Compensation Fund; to carry out the intent of the Congress of the United States; and to avoid further litigation; and to achieve judicial closure in this already tragic situation.

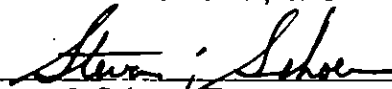
16. No review or challenge of the determination and award of the Special Master of the September 11<sup>th</sup> Victim Compensation Fund has been filed by Joshua Marchand or Rebecca Marchand with the Special Master of the Fund.

17. The September 11<sup>th</sup> Victim Compensation Fund concluded its operations in June 2004, with the completion of the award determinations for all claims filed with the fund. The Victims Compensation Fund no longer exists.

WHEREFORE, Rebecca Marchand, individually and as the Personal Representative of the Estate of Alfred G. Marchand, Deceased requests that the Court award her a Declaratory Judgment to confirm in all respects the determination and Award of the Special Master of the September 11<sup>th</sup> Victim Compensation Fund regarding the benefits awarded to her and to Joshua Marchand; for her attorney's fees and costs, and for such other or further relief which to the Court is just and proper.

Respectfully submitted,

STEVEN J. SCHOEN, LLC



Steven J. Schoen, Esq.

Attorney at Law

4 Hillside Drive

Placitas, NM 87043

(505)867-2802



**U.S. Department of Justice**  
**September 11<sup>th</sup> Victim Compensation Fund**

P.O. Box 18698  
Washington, D.C. 20036-8698

June 28, 2004

REBECCA L MARCHAND  
C/O MILTON G. SINCOFF  
KREINDLER & KREINDLER  
100 PARK AVENUE 18TH FLOOR  
NEW YORK, NY 10017  
USA

Dear REBECCA L MARCHAND:

Your claim number is 212-004530. Based on the information submitted, the final award is **\$769,971.88** and this was determined on June 9, 2004. The final award is comprised of \$1,397,969.88 of economic loss and \$450,000.00 of non-economic loss less collateral offsets of \$489,191.00 and \$588,807.00 as the present value of the pension from the victim's prior employer to be paid to Rebecca Marchand. The economic award includes the loss of the victim's pension from his prior employer as well as replacement services of \$279,257.00. The non-economic award includes \$250,000.00 for the victim's pain and suffering and \$100,000.00 to his spouse Rebecca Marchand and dependent Trae Hale. Offsets include \$25,000 paid to the Estate, \$17,500.00 paid to Joshua Marchand, \$23,177.00 paid to Trae Hale, and \$423,514.00 paid to Rebecca Marchand. Under federal law, approval of this award by the Special Master is final and not subject to judicial review. See Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101, Sec. 405(b)(3)(2001). **If you received an Advance Benefit from the Fund, the amount of that Advance Benefit will be deducted from the final award amount before payment.**

The Fund must authorize payment no later than 20 days after the final award determination, which was June 9, 2004. After the payment is authorized, it may take an additional four to eight weeks to process the payment and for payment to be received. Because of the large number of claims currently being processed for payment, sufficient time is needed to ensure that all payments are made correctly. *Please note that if we do not receive required eligibility documents, we may pay your award into a court supervised account.*

If you have any questions, please feel free to call your case manager directly or call the toll-free Helpline at 1-888-714-3385, 1-888-560-0844 for the hearing impaired (TDD); from outside the United States, please call collect at 301-519-8739.

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**U.S. Department of Justice**  
**September 11<sup>th</sup> Victim Compensation Fund**

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P.O. Box 18698  
Washington, D.C. 20036-8698

Every effort will be made to respond to your application and/or inquiries as soon  
— as possible.

Sincerely,

A handwritten signature in black ink, reading "Kenneth R. Feinberg". The signature is written in a cursive style with a large, stylized "K" and "F".

Kenneth R. Feinberg  
Special Master  
September 11<sup>th</sup> Victim Compensation Fund